

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 472 OF 2005

Madura Coats Limited.

...Petitioner.

Versus

Madura Coats Employees Union & Anr.

...Respondents.

.....

Mr. M.S. Naik for the Petitioner.

Mr. V.A. Pai for Respondent No.1.

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CORAM : DR. D.Y. CHANDRACHUD, J.

March 30, 2005.

ORAL JUDGMENT:

The award of the Industrial Tribunal has been challenged in these proceedings by the management only in so far as the question

of the age of retirement is concerned. The Tribunal has enhanced the age of retirement from 58 to 60 years subject to ascertainment of the physical fitness of a workman to continue in service after the age of 58. The management has been authorised to discontinue the services of a workman who is not found to be medically fit.

2. The award of the Tribunal was passed on 17th April 2003. The award was challenged by the Union on the question of basic wages and Dearness Allowance on 26th December 2003. The present petition was filed on 1st February 2005 nearly two years after the award. Though the explanation that is tendered before the Court is that since the award had not been published, the petition was not filed earlier, the fact, however, remains that the award was published only on 10th March 2005 and the Petition was instituted on 1st February 2005.

3. Be that as it may, Counsel has been heard on the merits on the challenge to the award. The Court is concerned in this case

essentially with workmen in the clerical cadre working in the Sales Depots at Mumbai. Model Standing Order 25 framed under the Bombay Industrial Employment (Standing Orders) Rules, 1959, in relation to the clerical and supervisory staff provides as follows :

“The age for retirement or superannuation of the workmen may be sixty years or such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force.”

The Model Standing Orders constitute a statutory recognition, in so far as they govern the region to which they apply, that sixty is an appropriate age for retirement for clerical and supervisory staff. Undoubtedly, a provision has been made by which latitude is conferred upon the employer and the workmen to arrive at an agreement or settlement and for an award arising out of industrial adjudication. The provisions of the Model Standing Orders are significant in that they provide at least in substantial part an answer to the submission which has been urged on behalf of the

management that evidence ought to have been adduced on behalf of the Union in regard to the prevailing age of retirement in the region-cum-industry. In view of the statutory provisions that are enunciated in Model Standing Order 25, the Industrial Tribunal cannot be regarded as being in error in having utilised those provisions at least as a persuasive guiding force for arriving at its adjudication on the issue of the age of retirement.

4. That apart, the matter is no longer *res-integra* but has been the subject matter of judicial pronouncement by the Supreme Court in several cases. In **Dunlop Rubber Company (India) Ltd. vs. Its Workman**, 1959 II LLJ 826, the Supreme Court in the course of its judgment dealt with the submission that in the case of an all India concern, unified service conditions particularly in regard to the age of retirement must prevail. The Supreme Court observed as follows:

“There is no doubt that in the case of an all India concern it would be advisable to have uniform conditions of service throughout India and if uniform conditions prevail in any such concern they should not be lightly changed. At the same time it cannot be forgotten that industrial adjudication

is based, in this country at least, on what is known as industry-cum-region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of service of an all-India concern are uniform. Besides, however desirable uniformity may be in the case of an all-India concerns, the tribunal cannot abstain from seeking that fair conditions of service prevail in the industry with which it is concerned. It therefore, any scheme, which may be uniformly in force throughout India in the case of an all-India concern, appears to be unfair and not in accord with the prevailing conditions in such matters, it would be the duty of the tribunal to make changes in the scheme to make it fair and bring it into line with the prevailing conditions in such matters, particularly in the region in which the tribunal is functioning irrespective of the fact that the demand is made by only a small minority of the workmen employed in one place out of the many where the all-India concern carries on business.”

The Supreme Court noted in the course of its judgment that the Industrial Tribunal had found that the retirement age was fixed between 55 years and 60 years in various concerns in Mumbai and “that the trend in all the awards had in recent times been to fix it at 60 years.” The Industrial Tribunal had, therefore, ordered that the age of retirement of the clerical staff should be fixed at 60 years. The Supreme Court held that if the Industrial Tribunal has thought it fit to

fix 60 years for the age of retirement for clerical staff in spite of the fact that there was an agreement in 1956 fixing the age of retirement of 55 years, it could not be said that the order of the Tribunal was not in accordance with the prevailing conditions in many concerns in the region in and around Mumbai. The Court, therefore, declined to interfere with the award of the Tribunal. Subsequently, in **Imperial Chemical Industries (India) (Private) Ltd. v. Its Workmen**, 1960 II LLJ 716, the Supreme Court revisited the issue. The Industrial Tribunal had increased the age of retirement from 55 to 58. Cross appeals were filed before the Supreme Court and on the appeal by the workmen, the Supreme Court held that the Industrial Tribunal had committed a manifest error in not fixing the age of retirement at 60. The Court held that the fact that for similar employees for other branches of the Company, the age of retirement is 55 years was immaterial. The Court again adverted to the judgment in **Dunlop** where it had been noted that the recent trend in the Bombay area is for the age of retirement to be at 60. In **G. M. Telang vs. Shaw Wallace**, 1964 2 LLJ 644, the Supreme Court once again reiterated

the trend in the Bombay area of fixing the age of retirement at 60 years. The Court held that the finding which it has arrived at in the previous decision in regard to the trend in the Bombay area was correct and required no modification. The Supreme Court held thus :

“On the contrary, the awards and agreements on the question of age of retirement about which information is furnished by the several documents on this record clearly show a consistent trend in the Bombay region to fix the retirement age of clerical and subordinate staff at 60. The very few departures from this practice which the tribunal has mentioned are, in our opinion, wholly insufficient to indicate any slowing down of this trend. What the tribunal has failed to notice is that instances which may justify a revision of the judicial opinion expressed on an earlier occasion about a particular trend must be strong and unambiguous and they must speak for the period both before and more particularly after the previous finding had been recorded in the matter.”

5. As already noted earlier, Model Standing Orders have specifically contemplated an age of retirement at 60 years for clerical and supervisory staff. The Tribunal has adverted to the enhancement of life expectancy. The view which has been arrived at by the Tribunal is consistent with statutory provisions and is amply borne out

by the law laid down by the Supreme Court. The interference of this Court under Article 226 is not warranted. The Petition shall stand rejected. However, it is clarified that the award of the Tribunal in regard to the age of retirement shall be prospective. In the meantime, during the pendency of these proceedings, a case arose in relation to an employee by the name of Ms.N. A. Carvelo, who was due to attain the age of retirement of 58 years on 24th December 2004. In Writ Petition 3125 of 2003 which was filed by the Union, an interim order was passed by a Learned Single Judge on 22nd December 2004. At that stage, the Union had challenged the award confined to the question of basic wages and Dearness Allowance. Since there was no challenge by the management to the award of the Industrial Tribunal, a Learned Single Judge held that it would be appropriate if the award which has not been challenged is given effect to during the pendency of the petition. This decision was carried in appeal and on 14th March 2005, a statement was made before the Division Bench by Counsel that the award was not published under Section 17 of the Industrial Disputes Act, 1947. Counsel appearing on behalf of the

management made a statement before the Division Bench that the services of Ms.Carvelo will not be discontinued without the prior permission of the Single Judge. Two other employees had approached the Labour Court for appropriate relief. In the circumstances, the order of the Single Judge was set aside and it was directed that the present petition shall be taken up for admission and appropriate orders in accordance with law. It is common ground that the award has been published on 10th March 2005. In the circumstances, the award is to become enforceable with effect from 10th April 2005. The case of Ms.Carvelo like other employees shall now abide by the terms of the award. The Petition has accordingly been taken up for final disposal by consent of Counsel together with the companion Petition.

6. The Petition is accordingly disposed of.

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